

THE NEW-YORK CITY-HALL RECORDER.

VOL. II.

For May, 1817.

NO. 5.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday*, the 5th day of *May*, in the year of our Lord thousand eight hundred and seventeen—

PRESENT,

The Honourable

JACOB RADCLIFF, *Mayor*,

PETER CONREY, } *Aldermen*.

JAMES HOPSON, }

HUGH MAXWELL, *District Attorney*.

MACOMB, *Clerk*.*

GRAND JURORS.

HENRY W. BOOL, *Foreman*.

WM. JAMES STEWART,	GEORGE BUCHANAN,
JOHN COFFIN,	JOHN GREENFIELD,
CLEMENT MOORE,	SAMUEL B. HARPER,
CHARLES HOLT,	JOHN L. FINK,
MORDECAI HOMAN,	JOHN WOOD,
PHINEAS FREEMAN,	AARON SERGEANT,
EPHRAIM STARR,	JAMES BLEECKER,
WALTER W. HEYER,	JACOB DRAKE.

Tuesday, April 15, 1817.

(CONSPIRACY.)

ISAAC ROGET'S CASE,

Indicted with ELIAS BLOIS and JEAN BAPTISTE DAULMERY.

J. O. HOFFMAN, EMMET, FISK, DIST. ATTY.
U. S. and MAXWELL, *Counsel for the Prosecution*.

COLDEN and OGDEN, *Counsel for the Defendant*.

It is a conspiracy for two or more persons to confederate together, to cause or procure a vessel, not belonging to either, to be sent from this country to a foreign port, and there take on board, for a return cargo, certain rubbish, enclosed in bales or boxes, which, by a cunning contrivance and artifice, should be passed at the custom-house, with its mark, as and for genuine goods, corresponding in weight and bulk with such rubbish, and that such vessel, with such return cargo, should be insured, as and for genuine goods, and sunk on the high seas, for the purpose of defrauding the insurers.

* In the preceding numbers of this volume the names of the District Attorney and Clerk were omitted, through mistake of the printer.

Whether the act of sinking or destroying a vessel at sea, by either of the conspirators, is, or is not, embraced within a statute of the United States, rendering such act a felony, is immaterial: a combination to perpetrate such act, is equally culpable as a misdemeanor, whether such statute exists or not.

It is a conspiracy for two or more persons to combine for the ultimate object of defrauding others, or prejudicing their rights; whether the particular act leading to such object is to be perpetrated out of the jurisdiction of this state, or whether contrary to the statute or common law: and, whether at the time of the trial, the other conspirators are without the jurisdiction of the court or not, the prosecution against one, originally engaged in the conspiracy, may be maintained.

The written examination of a witness in a criminal prosecution, taken before a magistrate, cannot be read in evidence to fortify the oral testimony of such witness, without producing the magistrate before whom such examination was taken.

The defendants were indicted during the last term, for conspiring together on the first day of July, 1816, at the city of New-York, to sink and destroy a certain vessel called the schooner Ocean, on a pretended voyage from Havre-de-Grace, in the kingdom of France, to some port in South America or the United States, for the purpose of defrauding divers persons to the jurors unknown. The indictment contained ten counts, in several of which the further object of the conspiracy was alleged to be, the taking in at such port in the kingdom of France, for a cargo, certain rubbish of no value, enclosed in bales or boxes with the custom-house mark thereon, as and for true and genuine goods, and effecting insurance thereon, to a great amount, for the purpose of defrauding the underwriters.

Maxwell, in the opening, spoke to this effect:

Gentlemen of the Jury,

This is a prosecution of no ordinary degree of importance. Isaac Roget, now on trial, is indicted with two others, for conspiring together to sink and destroy the schooner Ocean, on the high seas. This conspiracy was carried into effect. The facts, gentlemen, which will be given in evi-

dence, for the purpose of establishing the guilt of Roget, are numerous and somewhat complex; but I shall endeavour, in a brief manner, to detail the principal facts, that you may with the greater facility understand and apply the testimony, which we shall introduce in the progress of the cause.

Early the last spring, Gentlemen, Peter Favours, a Frenchman by birth, and a resident of Nobleborough, in the District of Maine, having been for some time then past engaged in transporting spars and other lumber, from that country to this city, was applied to by Blois, one of the conspirators, who became acquainted with him in this city, and first made a proposition to him to induce him to become engaged in the projected voyage, the nature of which I am about to explain. The approach was first made in a guarded, confidential manner; and for the purpose of inducing Favours to enter into the scheme, which he hesitated to do, the conspirators made him jointly concerned in the avails of the contemplated undertaking. Several secret meetings were held, at places which will be pointed out in the course of the trial, and in the month of June, 1816, a concert was entered into between Roget, Blois, Daulmery, and Favours, to carry into effect the nefarious scheme which is the subject of this indictment. A vessel called the schooner Ocean, of which Favours was the mate, and one Kelso the captain, was to proceed on freight from this city to Havre, in the kingdom of France, in which Kelso should continue the captain, and Blois, Daulmery and Favours, should go out as passengers. When the vessel should have arrived at Havre, the passengers were then to proceed to Paris, and purchase a quantity of fine goods, consisting of silks, handkerchiefs, and other articles, have them packed in bales or boxes, and regularly entered, examined, and marked, at the custom-house, for transportation. These goods were then to be unpacked in a secret manner, and straw, sand, and other rubbish, corresponding in bulk and weight, substituted in lieu of the genuine goods, which were to be put in similar bales and boxes again, passed and marked, and displaced as before, until, by this process, sufficient false goods should be obtained for the cargo. This rubbish was then to be transported to Havre, where, as will appear in the evidence, the Paris custom-house mark procures a pass for

goods, without a further examination. They were then to be shipped on board, and the vessel was to be cleared for, and proceed, to some port in the United States. On her return, she was to be scuttled and sunk at sea, and, if possible, on the coast of France. Insurance was to be effected in divers places in this country, on this vessel and her cargo, as a cargo of genuine goods passed at the custom-house. Roget, Blois, and Daulmery, were to have three fourths of the avails of the concern, and Favours and the captain the other fourth; and the amount of gain was calculated at \$10,000 each share, making, in the whole, \$40,000.

In pursuance of this conspiracy, the vessel was procured, and sailed for Havre some time during the month of July last. Blois, Daulmery, and Favours, who went out in the vessel, proceeded to Paris, purchased a quantity of genuine goods, and had them regularly packed in bales or boxes, and passed at the custom-house, and taking them in a back store, near the fish market in Paris, took out the goods, and substituted wood, sand, and other rubbish, corresponding in weight and bulk, and put the genuine goods in similar boxes, and had them again passed at the custom-house, and again displaced, until ninety-six boxes of rubbish were thus prepared and transported to Havre. There, the custom-house mark at Paris being found on the boxes, they were shipped without a further examination. The vessel sailed from Havre on the 19th of December last. The mate of the vessel, Henry R. Wolcott, had not been intrusted with the secret object of the expedition, which was unknown to any one on board, except the captain and Favours. After several abortive attempts by Favours, to sink the vessel on the coast of France, which were prevented by Wolcott, on the 25th of February, the former succeeded in effecting his object, while the hands on board, including Wolcott, by a preconcert, had been sent aloft. The vessel at this time was about five hundred miles from the Providence Bahamas. A small quantity of provisions was sent on board the boat, and after several days, the crew, consisting of seven persons, arrived at one of the Bahama Islands. Previous to the destruction of the vessel, and on the 27th of January, she arrived at the Isle of May, where Favours gave information to Roget, by a letter sent by another vessel. On this

information, Roget, and others concerned, proceeded to effect insurances in different places on the vessel and goods, as and for genuine goods, to a great amount.

Thus far this nefarious undertaking had succeeded, and no doubt Roget and the others concerned, were felicitating themselves in the prospect of the golden harvest they were about to reap. But, gentlemen, even at this time, and while the reward of fraud and iniquity was but just within the reach of the conspirators, they knew not the slippery foundation on which they stood. This scheme, so artfully planned, and so adroitly managed, was then already disclosed. One of the confidants in this dark transaction, who was supposed to be in the interest of the concern, proved treacherous. This was a Frenchman by the name of De Rosseau. He had been applied to almost at the commencement of the conspiracy, by Blois, to assist in the undertaking; and was afterwards instrumental in bringing the whole scheme to light. He gave information to several of the insurance offices in this city, and wrote to Boston, to prevent insurance from being effected on the schooner Ocean.

These, gentlemen, are the prominent facts. We shall introduce Favours and De Rosseau as witnesses, and fortify their statements by many corroborating circumstances. If honesty and fair dealing are to be cherished in a commercial community; if the fair character of the American merchant is worthy of support at home and abroad; if, in fine, gentlemen, the whole community is concerned in the detection and punishment of that species of fraud and villany, which aims at the subversion and ruin of our commercial prosperity, then, should the testimony warrant the conclusion that the defendant, now on trial, was engaged in this conspiracy, the prosecution will be entitled to your verdict.

Peter Favours, (in French, Le Fevre,) was sworn as a witness* on behalf of the prosecution, and stated in effect as follows:

I am a Frenchman by birth, and have lived in this country twenty-five years. I have lived in Boston, Cape Cod, and at Nobleborough, in the District of Maine, where my family now resides. I follow the

seafaring business; I have known Elias Blois about twelve months; Isaac Roget, Jean Baptiste Daulmery, and Jean Alexander De Rosseau, about ten months. I first became acquainted with these men in this city, under these circumstances. Early in the last spring I came to this city in the ship Betsey of Nobleborough, loaded with spars and other lumber, of which vessel I was mate. While the ship was lying at Whitehall, Elias Blois came on board and entered into conversation with me; wherein he said, that I was a man who deserved a better employment; I told him that I was well satisfied with my employment; and, after some further conversation, he said he had a voyage in view of great importance, but did not, at that interview, inform me of its nature. He invited me to breakfast, and soon after informed me that he wanted a small vessel of about one hundred and fifty tons to charter, and offered me employment therein. Understanding that the object was to charter a vessel to France, and having a brother in that country, with whom I had business to transact, I was the rather induced to listen to the proposition.

When I returned to Nobleborough, I found that in my absence, a letter came from my brother in France, and I was anxious to go. I came again to this city in the schooner Ocean, of which Moses Kelso was captain, and myself the mate. On our arrival, Blois invited me to dine, and at that time told me to refer the captain to Daulmery, to get a freight for the vessel. The next day I went with captain Kelso to Daulmery, when the arrangement was made to send the vessel on freight to Havre, and she was accordingly advertised.

The first time I saw Roget, was at Daulmery's counting-house, in Pearl-street; where Roget, Blois, Daulmery, and myself, only, were present. We went into a back room, and it was then proposed, and agreed by, and among the whole, that Roget, Blois, and Daulmery were to have three shares, and the captain and myself the other share in the projected voyage. It was proposed and agreed on, to purchase thirty casks of potash and some logwood as freight, and to get as much other freight as possible.

The object of the voyage, as then expressed and agreed on, was, that the vessel, when freighted, should proceed to Havre, and a brother of Roget in that coun-

* By request of the counsel for the defendant, De Rosseau, hereafter introduced as a witness, left the court room.

try, was to become actively engaged and furnish money, for the purpose of purchasing a quantity of silks and other articles, which should be put up in the usual manner, in bales and boxes, and marked at the custom-house, which goods should be taken out and false goods put in their place. After thus procuring a cargo, the vessel was to be sunk on her return home, for the purpose of deriving a benefit from insurances to be effected.

The next meeting was appointed at the house of the mother of Daulmery, at the village of Greenwich, about a mile and a half out of the city, towards the state-prison. I think the time of meeting was on Sunday, and when I arrived, I found Roget, Blois, and Daulmery in the garden, sitting on the grass. They appeared to be very glad to see me, and Roget, in particular, inquired what progress I made in loading the vessel. While there, I asked Roget for \$100, which he brought me the next day on board the vessel. The object of the voyage at this meeting was again discussed, and understood by all present, and we joined hands in parting.

The next meeting was appointed by Blois, to be held at his house, at the corner of Chapel and Duane-streets, where I found Blois and Daulmery. After breakfast Daulmery retired, and a short time after, an old gentleman, named De Rosseau, came, whom Blois introduced to me as an old captain of his, whom he wanted to go in the Ocean as a passenger to France, and work his passage. After this, Blois told me that De Rosseau was to sail to Bordeaux in the Rebecca, and return in the Ocean, for the purpose of *doing the deed as he had once done before*.

Shortly after the meeting at Daulmery's, I informed the captain of the secret object of the voyage, and of the share we were to have. He agreed immediately to the proposal.

At the meeting at the house of Blois, I was introduced to a Frenchman by the name of Sauvignac, whom Blois told me he was anxious should be concerned; for, that Roget fell short of funds, which Sauvignac could furnish. Blois further told me, that he did not wish Roget to know that Sauvignac was engaged in the concern.

The vessel sailed some time in July, and Blois and Sauvignac came on board at

Sandy-Hook, and the second day after we sailed, Daulmery came on board in a small boat from this city. These went out as passengers in the vessel. We had forty-five days passage to Havre; where, after staying four days at a tavern, where we all boarded, Blois and myself took stage for Paris, passing in our route through Rouen, Boulogne, and Calais. We left Daulmery at Havre, and when we arrived at Paris found him there. After waiting several days for the arrival of Roget's brother, he at length came. A short time after this, Daulmery purchased a quantity of silks and shawls, which were brought to his lodgings. About thirty-seven bales of these goods were put up and carried to the custom-house, inspected and marked. The bales were then taken to a back room in a store near the fish market, where Daulmery, Blois, Sauvignac, and one Le Clare were engaged about six weeks in unpacking the bales, and putting therein rubbish, consisting of wood, paper, stones, straw, and sand; answering in weight and bulk with the genuine goods, which were again put in similar boxes, and again inspected and marked at the custom-house, until, from the goods, they had prepared for transportation ninety-seven bales or boxes of rubbish, on which the covers and stamps of the custom-house were nicely replaced. The genuine goods were then sent to Bordeaux, and the rubbish to Havre, consigned to Tourette, Wells, & Co.

When they first began to pack and shift the goods, I was obliged to go to Calais on business. Blois told me that they had taken into the concern Le Clare and Le Mercie; for the purpose of assisting in the project with funds. He gave me twenty double louis d'ors to buy a large boat, for the purpose of saving ourselves when the vessel should be sunk. According to his directions, I procured a large clinker built boat, of nineteen feet keel, having two masts, a bowsprit, and three sails. At Havre he also gave me a memorandum in writing, containing the address of "*Messrs. Bonnet & Fils, 40 rue James, Bordeaux*," for the purpose, as he said, that, should the vessel be sunk on the coast of France, as was expected, I might call on that house for assistance or supplies.

We sailed from Havre on the 19th of December, bound to Boston, with seven per-

sons on board. I came as a passenger, and one Henry Wolcott was the mate, who had no knowledge of the plan for sinking the vessel. The first night after we sailed, we cleared Cape Barfleur, and the next night there came on a very heavy squall of wind. While all hands were engaged at work forward, the captain told me to sink the vessel. I went below, and bored four holes in the bottom of the vessel with an auger, and in a short time the water gained rapidly.

The mate found out that the vessel had sprung a leak, and he went below with me, and ascertained the place where the water came in; and by drawing a sail under her bottom, he so far restrained the leak, that at length we succeeded in stopping the holes. There was a violent gale for twenty days, and the weather too rough to admit the execution of our design. We ran south for the trade winds, and attempted to get into Madeira, but could not, by reason of the gale.

The next attempt I made was on the eighteenth of January, when the vessel was near the island of Teneriffe. At this time I bored several auger holes nearer her keel than before; and it was with much difficulty that she was prevented from sinking by the working of two pumps. The mate, as before, with my assistance, plugged up the holes. On the twenty-seventh of January we arrived at the Isle of May, at which place I wrote two letters to Roget, informing him that I expected to be soon in Boston with his goods.

On the 25th of February, while the hands were engaged, and the mate and boy were aloft bending a topsail, I bored several holes in the bottom, and before it was discovered by the boy, who went below for a light, so much water was in the hold that it was impossible to free the vessel. We took the boat and put therein a barrel of water, half a barrel of flour, and some pork, and, seven of us being on board, shaped our course for the Providence Bahamas, according to our calculation about five hundred miles distant. The place where the vessel sunk was in lat. 30, long. 60, and about five hundred miles N. E. from the Isle of Thayer. In four days we made the Isle of Thayer, one of the Providence Bahamas. I arrived here about a month ago, and, with the captain, called on Roget, who appeared to be very glad to see us. I related to him the particulars of the voyage, and he advanced to

me at different times about \$150, of which I made a memorandum at the time in my pocket-book.

The memorandum was here produced by the witness.

I set down the amount, because Roget told me when Daulmery came I was to have my part of the avails of the voyage. In a conversation which I had with Roget, he said, that De Rosseau had been intrusted with the whole secret, and that he (Roget) suspected that De Rosseau had betrayed us. Roget desired me not to be seen in his company, as it would excite suspicion, and told me that I had better be off. I was arrested as I was about leaving the city in the eastern stage.

Here the counsel on behalf of the prosecution exhibited two packages of papers, sealed close, and Favours being further examined, stated that those papers were taken away from him at the time of his arrest, and further, that he had not seen or had any communication with De Rosseau since his return.

Questions by the Court. What was your object in going so far to the south as Madeira?

Witness. For supplies. We had been detained in the Bay of Biscay a number of days, by a strong W. N. W. wind.

Could you not have made a port in England?

Witness. We could not: there was a strong northerly wind.

Did not the mate or any of the people on board, to your knowledge, know or suspect your design?

Witness. I do not think they did. The captain and myself gave out, that the reason of keeping the vessel so far to the south, was for the purpose of taking the trade winds.

Here the witness underwent a long, critical cross-examination, which was ably conducted by Colden.

To the questions put, he answered, in substance, that he had been indicted in the circuit court of the United States for sinking this vessel, and had been told, that if he turned state's evidence, he should not be prosecuted to conviction; that Blois first disclosed the plan to him as an affair into which himself and others had entered by a previous concert. The witness acknowledged that it was a wicked, shameful thing; and that for being concerned he had great reason to be,

and was, ashamed; but that there were great advantages held forth, by Blois and the others, to induce him to undertake the voyage.

The witness was not certain that the brother of Roget, in France, took an active part; although, when the witness left this country, he understood the brother was to be so engaged. La Clare and La Mercie, as the witness understood from Blois, after the return of the witness from Calais, were taken in as partners, to increase the funds of the concern.

The first attempt to sink the vessel was made about five miles from land, the second about six miles from Teneriffe; and the holes were bored nearer the keel than the first were. The captain, mate, and witness stopped the leaks. It was difficult to discover whether the holes had been newly bored, because the planks were burned black, as the witness presumed, when they were put on the bottom of the vessel.

Jean De Rosseau, a Frenchman, who did not understand the English language, was here sworn as a witness on behalf of the prosecution, and William A. Seely, Esquire, was sworn as an interpreter.

This witness stated that he had known Elias Blois eight or nine years ago. Early last spring, Blois informed the witness that he, Blois, wished to employ the witness on the voyage in the Ocean, but did not, at that time, tell him why he wished so to employ him. The witness first became acquainted with Favours at the house of Blois, at the corner of Chapel and Duane-streets, some time in April last; that the witness had not seen, or had any communication with Favours, since he had arrived in New-York. At the house of Blois, the object of the projected voyage was explained by Blois; and by the statement of this witness, it appeared that the nature of the voyage was the same as that detailed in the testimony of the other witness. Blois requested the witness to go out in the Ocean, but he told him that he could not go on board that vessel, as he had business to transact in Bordeaux. The witness, however, gave Blois encouragement that he would go out in the Rebecca to Bordeaux, and become concerned in the scheme; but, when the vessel sailed, the witness pretended to be sick, and refused to go.

Blois, however, had previously requested the witness to apprise him as soon as he

should have arrived at Paris, and gave the witness a written memorandum, or address, to Messrs. Bonnet & Fils, 40 rue James, Bordeaux. The object of the address was, that the witness might go to that house in Bordeaux and get such letters as Blois might send. At this interview, Blois stated to the witness that Roget, Daulmery, Favours, and himself, were concerned, (all of whom except Roget were to go in the vessel,) but did not state the name of the captain.

The vessel sailed on the 25th of July, and Blois and Daulmery went on board separately, after the vessel had sailed, as the witness was informed by a daughter of Blois.

Afterwards, and in September, the witness met Roget in Broadway, opposite to the Park, and, on inquiring of him whether he had heard of Blois, he affected much surprise, and said, "*I do not know who, or what you talk about.*" To this the witness replied, that he, Roget, was wrong in affecting surprise, for that he, the witness, knew as well as Roget the secret object of the Ocean in her voyage. Roget, however, did not appear to understand the witness, and they separated without a further explanation.

On the first of October following, the witness wrote a letter to Roget, stating, that he, the witness, had a perfect knowledge of the voyage: that the schooner Ocean had been freighted, in part, and cleared out by Hutchinson and Daulmery; and that it was intended, by those concerned, that she should follow the example of the *Amiable Mary Ann*. This vessel, according to the testimony of this witness, was sunk at sea in the year 1810.

A day or two afterwards the witness met Roget at a Mr. Labouisse's store, and, after retiring with Roget in the yard, delivered him the letter; which, after reading, he tore in a thousand pieces, and told the witness to keep the affair a profound secret, and he should be satisfied; which the witness understood to mean that Roget would relieve the witness from his poverty. The witness afterwards had a private conference with Roget, in his store, in which he inquired of the witness in what manner Blois had related to him concerning the sinking of the vessel? Upon which the witness entered into a detail of the particulars of the voyage, as he understood the same from Blois, and Roget expressed the utmost surprise that Blois should have intrusted the witness with

the secret; and again requested him to keep it a profound secret, and he should be satisfied.

The reason the witness wrote to Roget was, that he apprehended that Roget, by reason of his deafness, did not understand the communication made by the witness near the Park. Roget had paid the witness money, at different times, to the amount of \$50.

About the first of February last, on an inquiry made by the witness whether Roget had received word from the vessel, he replied, that he had received word from his brother, living in Bordeaux, who would have nothing to do with the vessel or the concern. Roget also stated, that he was anxiously waiting for advices which would enable him to make insurance on the vessel.

On or about the 22d of the same month, Roget told the witness that Daulmery and himself had received an invoice of the cargo, which had been a long time coming, and that he was afraid that, by reason of the delay, he should not be able to get the insurance effected.

On or about the first of March, Roget inquired of the witness whether he had written a letter to Boston, informing the underwriters concerning the object of the voyage? stating, as a reason of the inquiry, that he, Roget, had made application, and that the underwriters in that town had refused to insure. The witness, to this inquiry, informed Roget that he, the witness, had written no letter to Boston containing such information, which was a fact; though the witness had, in the month of January preceding, caused such letter to be written by another.

It further appeared, on the direct examination of this witness, that shortly after the vessel had sailed, and in the month of July, he disclosed the nature of the voyage to William Lovett, Esquire, president of the "Fire Insurance Company" of this city, and advised him not to take any risk on that vessel, because she was to be sunk at sea, in the same manner as the *Amiable Mary Ann*. He also mentioned the matter to Gurdon S. Mumford, and Francis Depau, about three months ago; before which time, he, the witness, had been referred, by a French gentleman, to William A. Seely, Esquire, for advice in the premises, to whom he communicated the whole affair.

On the cross examination of this witness, it further appeared, that the witness is a seafaring man now residing in New-York, having a family in New-Orleans. That in the latter part of April, the matter was first communicated to the witness by Blois, when none else was present, for the purpose of inducing the witness to undertake the voyage; and to the proposal made the witness gave him some encouragement, by saying "Perhaps I may." In the month of May, several private conferences were held between Blois and the witness; and when the vessel was loading, the witness was on board at the request of Blois.

The witness, at length, consented to go to Bordeaux in the *Rebecca*, but took no steps preparatory to going, and never intended to go. He never conversed with Roget on the subject, until the month of September; and the object of the witness in imparting his knowledge to Roget, was to induce him to advance, or lend, the witness money. He had been promised nothing for swearing in this prosecution; but in the month of July last, he told Mr. Lovett that he, the witness, had an important discovery to make for a small sum of money; Lovett told the witness that he could do nothing about the matter, and refused to offer any sum for the discovery.

The witness first became acquainted with Blois in 1810, who, with another, came to the witness, to engage him to take command of the *Amiable Mary Ann*, which was afterwards sunk at sea. The witness did not take command of that vessel, but was well acquainted with the nature of her destination, and advised Blois to be very careful, as he ran a great risk in that enterprise.

At the time the proposal relative to the *Ocean* was made to the witness, no particular part was assigned for him to do, but he was told that he should be perfectly satisfied. He took no pains to dissuade Blois from the undertaking, because he, the witness, found Blois fully disposed or determined to carry it into effect. The witness understood from Blois, that the object of the voyage was, to fill the vessel with trumpery of divers kinds and make insurance thereon, as, and for, genuine goods.

It appeared further from the testimony of this witness, that he had been examined before Judge Livingston, concerning this transaction, and that he, the witness, had

made oath before that magistrate of the facts contained in his examination, which were reduced to writing.

John De Launy, a witness on behalf of the prosecution, on being sworn, stated, that his house, at Paris, was of the firm of Thuret and Co., a branch of which was at Havre. In the month of June last, a friend of the witness having shipped a quantity of cotton in the schooner Ocean, Daulmery proposed to the witness to have the goods consigned to his firm at Havre, and requested an introductory letter to the house from the witness, which was given, though in very reserved terms. This witness also proved, that De Rosseau had often called on him for money, which he, the witness, refused to pay; but that a short time since he advanced him \$30.

It was further proved by this witness, that after goods are passed at the custom-house in Paris, and sent to Havre for transportation, the examination at the latter place is very slight: the Paris custom-house mark is considered as sufficient.

William A. Seely, Esq. here proved, that the address to *Messrs. Bonnet and Fils, of Bordeaux*, in the possession of Favours and De Rosseau, was in the handwriting of Elias Blois.

It was here proved, that Roget, on the 11th of March last, effected an insurance in the National Insurance Company in this city for \$4,000, at two and a half per cent. premium, on the schooner Ocean and her cargo, from Havre to Boston. The vessel is warranted to be safe at the Cape-de-Verd Islands on the 27th of January last. Another policy was effected by Roget on the vessel on the 5th of March, for the same sum, in the office of the National Insurance Company, at a premium of 20 per cent. The abandonment and claim were made on both these policies on the 23th of March. Another policy, effected by Messrs. Hutchinson and Daulmery for \$10,000, in the American Office, at a premium of two per cent. in which the warranty was the same as on the other policies, was here offered in evidence on behalf of the prosecution; but this evidence being objected to, on the ground that the rights of persons not parties to this prosecution were to be affected by this course, the production of the evidence was not insisted on by the counsel for the prosecution.

William Lovett, a witness on behalf of

the prosecution, on being sworn, stated, that he was President of the Fire Insurance Company of this city. That about three months ago, De Rosseau came to the house of the witness, and informed him that this plan was in agitation, and advised him not to risk an insurance on the schooner Ocean. At this time De Rosseau gave the witness the names of those concerned, which were Blois, Roget, Daulmery, and Favours; but he had previously, and in the month of July preceding, informed the witness that a vessel would come to this city from a port so far at the eastward, that the usual course of the mail between that port and this city was nine days, and that this vessel was to be sunk at sea on her return voyage; but that there was no danger in insuring on the outward voyage. The witness insured on the outward voyage, and was applied to by Hutchinson and Daulmery, to insure on the return of the same vessel, which he refused to do. De Rosseau did not ask this witness for any money as a reward.

It further appeared by the testimony of Gurdon S. Mumford and Francis De Pau, that De Rosseau gave information to them concerning the object of the voyage, and cautioned them against insuring the vessel on her return, in the manner stated by De Rosseau in his testimony.

After proving by the keeper of the Bridewell that Favours was arrested on the 3d of April, and that no person had been admitted to make any communication to the prisoner, except the district attorney, the counsel on behalf of the prosecution rested the cause.

Colden hereupon stated to the jury, that the nature of the defence did not require a formal opening by the counsel for the defendant. They should first offer in evidence, certain bills of lading and invoices of goods, which were exhibited to the underwriters when the several policies were effected. In the second place, they should introduce testimony from the most respectable sources, of the standing and fair character of the defendant; and, thirdly, contend before the court and jury, that even, admitting the combination charged in the indictment established by the testimony, still, that the defendant could not be found guilty by any known law of this state.

The counsel proceeded to produce certain letters and invoices, produced to the underwriters at the time the several policies were

effected, as preliminary proofs. The letters were four in number, written by Daulmery to Roget; the first, dated at Havre, on the 11th of September, is in the French language, in which the writer, after giving his friend an account of the progress in the business, as if done in the usual course, desires to be remembered to his neighbours; this word being underscored. The second is dated at Paris, the 7th of November, 1816, in which the invoice of the goods is stated at \$6,000; the third is dated November 9th, in which the writer informs Roget, that the Captain had changed the voyage, and was to sail for Boston; and the fourth, bearing date on the 14th of December, enclosed the invoices and bills of lading for the cargo, valued at 36,000 francs, "with regard to which sum," says the writer, "I have debited you with the amount."

A number of witnesses, of the first respectability, were here sworn on behalf of the defendant, the most of whom concurred in showing the general character of the defendant fair and unexceptionable. Many of them had known him eighteen or twenty years in this city, where he had lived as a merchant of standing and respectability.

Alfred Hutchinson, a son of the gentleman of the firm of Hutchinson & Daulmery, on being sworn as a witness on behalf of the defendant, stated, that the consignments and bills of lading of the schooner Ocean, on which the policies were effected, were received by Roget and the firm above mentioned, on the third of March, by the Minerva-Smyth; and that, about the same time, letters were received from Daulmery by two other arrivals from France.

This witness put Daulmery on board the Ocean at the Hook, in a small boat, the second day after the vessel had sailed.

The witness further stated, in his cross-examination, that a letter had been received by Roget from Favours, under cover to Hutchinson & Daulmery, dated at the Isle of May, January 27th, 1816. The letter, on being called for by the counsel for the prosecution, was produced and read to the jury.

Favours, in this letter, informs Roget that the vessel had been obliged to put into the Isle of May, that all was well, that they intended to proceed on the voyage the next day, and that Roget would soon receive his goods as he hoped. In the conclusion of the

letter, the writer requested Roget to send his wife \$50.

Emmet here offered to read the examination of De Rosseau, taken before his honour Judge Livingston, on the 29th of March, for the purpose of confirming the testimony of the witness.

This was objected to by the counsel for the defendant, on the ground that no written examination, taken under oath before a magistrate, could be produced in evidence, without producing the magistrate to show under what circumstances it was taken.

Emmet contended to the court, that the examination might be read, not as the ordinary examinations of parties accused under oath, but as the mere declarations of the witness. Should there appear to be a coincidence between the written statement, and the testimony of the witness, the statement would be confirmatory evidence, and, in that point of view, ought to be admitted.

The court decided that the examination could not be read, without producing the magistrate before whom it was taken.

Henry R. Wolcott, a witness on behalf of the prosecution, on being sworn, testified that he was the mate of the schooner Ocean, when she was sunk on the 25th of February last. He described the boat put on board the Ocean for the purpose of saving the crew, in the same manner as Favours did in his testimony; but was told by Favours that he procured the boat for the purpose of smuggling goods. The progress of the vessel, and the different attempts to sink her, as related by this witness, corresponded with the testimony of Favours. He stated that the first time the vessel sprung a-leak, and when he, the witness, was endeavouring to stop it, Favours came into the hold, and said, "For God's sake, my friend, let her sink: I will give you \$500." That, afterwards, on mentioning this circumstance to the captain, he said that Favours was a d—d fool. The witness also told the captain, that two of the holes appeared to be new, and the captain replied, that it was impossible; and further said, that the vessel had formerly been used for carrying wood, and that there were a number of old plug-holes in her bottom, which had been made for the purpose of letting out water when she was up high and dry on the shore.

According to the testimony of this wit-

ness, it was a difficult matter to ascertain whether the holes in the bottom had been recently bored or not, because the planks, in steaming, had been burned black, as was sometimes the case in building vessels.

While in Teneriffe, the witness found, in the captain's chest, an inch and a half auger; but he did not know for what use it was intended, or the secret object of the voyage. His testimony, in other particulars relating to the loss of the vessel, agreed, substantially, with that of Favours.

The testimony on both sides closed at about one o'clock in the morning, and the cause was ably summed up by Messrs. Ogden and Colden on the side of the defendant, and Hoffman and Emmet on behalf of the prosecution. It is impossible for us to present much more to our readers in these arguments, than the questions of law which were raised and submitted to the court and jury.

After expatiating on the extreme hardship to which the defendant would be subjected, should the jury rely on the testimony of Favours and De Rosseau, the counsel for the defendant contended, that he could not be legally convicted while Blois and Daulmery were without the jurisdiction of the court.

The statute of the United States (2 Craydon's Dig. 94.) was also read and commented on by the counsel.

"Sect. 1. Any person, not being an owner, who shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy any ship or vessel, *unto which he belongeth*, being the property of any citizen or citizens of the United States, or procure the same to be done, being thereof convicted, shall suffer death.

"Sect. 2. If any person shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy any ship or vessel, of *which he is owner, in part or in whole*, or in anywise direct or procure the same to be done, with intent or design to prejudice any person or persons that have underwritten, or shall underwrite any policy or policies of insurance thereon, &c., being convicted, shall suffer death."

The counsel contended, that the defendant could not be found guilty of conspiring to do an act which, allowing it to have been perpetrated in the mode disclosed in the

testimony, was not cognizable by the laws of the United States, or of this state.

Taking into consideration the first section of the act, Roget could not be said to belong to the vessel, and with regard to the second section, he was not the "owner in part or in whole;" and, therefore, did not come within the provisions of the statute. If he had committed no offence against the laws of the United States, which alone take cognizance of a crime of this nature, then, surely, he could not be found guilty of this conspiracy.

It was further strenuously urged, that there was no positive testimony that Roget was a party to this plot, except that of two professed accomplices; one of whom had sworn under the strong impression that by means of the conviction of Roget, he, the witness, would escape a merited punishment. De Rosseau, by his own showing, was corrupt and infamous, and not entitled to belief; and, although the counsel conceded that a defendant might be convicted on the testimony of an accomplice, yet such testimony ought to be strongly corroborated.

It was not denied but that there had been a wicked conspiracy to sink and destroy the vessel for the purposes stated in the indictment; but the counsel averred that, independent of the testimony of Favours and De Rosseau, not a fact or circumstance appeared to implicate Roget, or make him a party in the conspiracy.

It was argued, on behalf of the prosecution, from the authority of the case of "The King v. Kinnersley & Moore," (1 Strange, 193.) that one party to a conspiracy may be tried and convicted, though the others are not taken. The only question is, whether the defendant, with others, did conspire to do the act laid in the indictment; and it is immaterial whether more than one is brought to trial.

With regard to the second point, raised by the counsel for the defendant, it was answered, that a conspiracy consisted in combining together to do an act to the prejudice of the rights of others. It is not necessary that this act should be against the provisions of any statute, or the common law.

The common case in the books, of a confederacy by *journeymen*, for the purpose of raising their wages, shows that a conspiracy may be maintained for concerting to do, or

not to do, that which is not enjoined or prohibited by any law. So a conspiracy may be maintained against persons who confederate together to impoverish another; and the whole range of authorities evince the rule to be, that a conspiracy may as well be maintained against persons who have combined to do that which is contrary to the principles of natural justice, or will operate to the prejudice of the rights of others, as those who have conspired to do an unlawful act.

The counsel contended, that the striking coincidence between the testimony of Favours and De Rosseau, and the facts established in the case, independent of their testimony, left no room to doubt that the defendant was a party in this conspiracy.

There was a number of very minute particulars in the testimony of Favours, respecting the places where the plan was unfolded to him. Persons are represented at or near these places, who are not joined in this indictment, who might have been brought to detect him, had he not related the truth. The same address of "*Bonnet & Fils*," of Bordeaux, is left with Favours and De Rosseau. Favours and De Rosseau swear that Daulmery and Blois went on board after the vessel sailed; and one of the witnesses on behalf of the defendant concurs with them in this part, as respects Daulmery. The other partner, of the firm of Hutchinson & Daulmery, had he been introduced as a witness, might have contradicted much which had been stated by Favours, had it been false; and the non-appearance of such a witness strengthens the testimony of Favours.

The letter sent by Favours to Roget, from the Isle of May, requesting him to send his wife \$50, was a strong confirmation that Roget acted in concert with the others, and is wholly inconsistent with his innocence.

Emmet, in commenting on the several letters produced in evidence, contended, that the whole correspondence furnished conclusive evidence of a foul and wicked conspiracy. Why, and wherefore, in one of these letters do we find the word *neighbours* underscored, unless more was intended by the writer, by that dash, than the word naturally imported?

In answer to the suggestion by the opposite counsel, that the public prosecutor had unjustly selected, as a victim, a man of good character, and one professedly less guilty

than his accusers, Hoffman spoke to this effect:

Gentlemen of the Jury—One of the great objects of a prosecution of this nature, is public example. And when a man of the standing and respectability of the defendant, unfortunately, has been seduced by the allurements of temptation, from the path of rectitude, is not the example which his detection and punishment affords, more impressive, more useful, than if he stood in a lower grade in society? I believe you will say, with me, that the more exalted the offender, the more impressive the example.

The man of low or doubtful character, in the humble walks of life, may indeed be seduced, by a prospect of wealth, to the commission of crimes for which he may be consigned to punishment. In the estimation of mankind he sinks but little below his natural level; and his declension is viewed with a kind of apathy and indifference. But when the man of respectable standing and connexions, high in the estimation of his friends, with an amiable family, like this defendant, prompted by avarice, in the gloomy recesses of his mind, conceives and projects a dark, malignant scheme, fraught with mischief and ruin—when the felon, trembling with conscious guilt, is arrayed at the bar, and his turpitude is disclosed, the surrounding auditory are struck with wonder, and a deep interest is excited in the community. The equality of public justice is displayed, and the majesty of the law magnified.

It has been said by the opposite counsel, that the defendant is less guilty than Favours, and the public prosecutor has been censured for the selection he has made in the objects of the prosecution. But, gentlemen, Favours, in moderate circumstances, and in good employment, was seduced by the temptations held forth by Roget; and, in the view of every intelligent mind, nay, in the sight of the Supreme Intelligence itself, the seducer is infinitely more guilty than the seduced. It is true, that the defendant may, literally, aver, in the language of Macbeth in the play, to the ghost of Banquo,

"Thou canst not say I did it!"

but, in the eye of the law, and, in the eye of heaven, there is no difference between the instigator of the crime, and him that perpetrates—between him who hires to kill, and him who commits a murder.

In a commercial community like ours, where good faith and fair dealing should ever predominate, and characterize the conduct of our merchants in their domestic and foreign concerns, can there be a more deliberate, wicked act devised, than the one now under consideration?

To the strong proofs adduced on behalf of the prosecution, there is one ground of defence only interposed. The good character of the defendant is relied on as a shield from this prosecution. But whatever may have been his character heretofore, it is now lost for ever. It should be considered that this testimony of character is the lightest of all proof. A man may be for a long time a villain in heart and practice: he may revolve in his mind and project schemes in secret which may not meet the light of day. Eluding the vigilance of public justice, he may even proceed to their consummation, without detection or suspicion, and retain the reputation of an honest man. Even when detected, for justice does not always sleep, he may bring twenty witnesses to swear to an unexceptionable character for twenty years: but if a clear case of guilt is established; if proofs, multiplied and concurrent, leave not a shadow of doubt, the demands of public justice must be satisfied.

Temptation, gentlemen, is the Ordeal, the proof of virtue; and, believe me, it is not presumption to say, that few men, however fair and unexceptionable their character, however respectable their family and connexions may be, when subjected to the trial, will escape unhurt. The stronger the temptation, the greater must be the strength in resisting.

Need we recur to history, to show the strong power of temptation even over a mind devoted to the sacred interests of religion, and the service of his God? Advanced to the highest preferments in the church, and at the head of his profession, with a character far above reproach or suspicion, the unfortunate Dr. Dodd will ever afford a memorable example of the frailty of our nature, when assailed by temptation. In a fatal, unguarded moment, he was seduced from his allegiance to the laws of his country and to his God. He fell a prey to avarice, and expiated his offence on a gallows.*

* This divine having been a preceptor to the Earl of Chesterfield, an English nobleman, and

His honour the Mayor charged the Jury, that an indictment for a conspiracy might be maintained, as well for entering into a confederacy to do an act which would prejudice the rights of others, as for doing an unlawful act. It was an offence at common law; and this prosecution might be maintained, whether the act which is said to be the object of the conspiracy, is or is not prohibited by the laws of the United States. The offence, in the opinion of the court, is the same, independent of any statutory provision.

This was not the first case of this nature which had been adjudicated in our courts. Some years since one Petit was tried and convicted, in this court, for entering into a conspiracy, with others, to sink a vessel at the Hook.

Another point has been raised by the counsel for the defendant. It is said, that as Roge only has been taken, and the others are without the jurisdiction of the court, that he cannot be convicted according to law. But, in the opinion of the court, this objection is unfounded; and should the jury believe that there was a concert between two or more, the indictment may be maintained, and a conviction properly had, against either of the conspirators who may be brought to trial.

In relation to the testimony of Favours, he stood before the court in the light of an approver, and testified to save himself from the gallows. He is a corrupt man, and De Rosseau does not stand in a better situation. Whatever may be the rule in England with regard to the competency of the approver, in the view of the court, no man ought to be convicted on the uncorroborated testimony of an accomplice. Such testimony is too unsafe to be relied on by a jury, and the good character of the defendant is a sufficient shield against the uncorroborated state-

being in want of about 4,000*l.* forged a bond against the Earl, and put it into the hands of a broker to raise the money, expecting to take it up before it became due. The person who advanced the money on the bond, being a very particular man, saw something in the instrument which did not appear right, and sent it directly to the Earl to have him execute another. The Earl disowned the bond, and the Doctor was brought to trial and convicted. Notwithstanding greater exertions were made to have the royal clemency extended to the prisoner, than had, perhaps, ever been made before in favour of any individual, the Doctor was executed. This was in the year 1777. En.

ments of such witnesses as Favours and De Rosseau.

The jury, therefore, ought to look to the other facts and circumstances in the case, independent of the testimony of Favours and De Rosseau.

Here his Honour took a view of the principal grounds on which the Counsel on both sides relied, and concluded by charging the jury, that if they believed the testimony of Favours sufficiently corroborated, and if, from all the facts and circumstances in the case, they believed that the defendant was a party in this conspiracy, it would be their duty to convict, otherwise, to acquit him.

The defendant was found guilty by the jury, and on the last day of the term, he was sentenced to the *City Prison* three years. His honour the Mayor, on that occasion, observed, that the offence of sinking a vessel at sea, for conspiring to effect which the defendant had been found guilty by a jury, after a long and patient investigation, was but little inferior to the crime of destroying by fire, a dwelling house on the land. Both offences, in their nature, were calculated to endanger the lives of men, and deserved the most exemplary punishment.

(FORGERY—COUNTERFEITING.)

SIMEON VAN HOUTON and JOHN HARVEY'S CASES.

MAXWELL, Counsel for the Prosecution.

Dr. GRAHAM, B. GARDENIER, & PRICE, Counsel for the Prisoners.

Where a prisoner was indicted for having a single bank bill in his possession, with an intention of passing it, and it appeared in evidence that he had received it for the purpose of returning it to the person from whom it was said to have been received, and openly showed it, as a bad bill, though it should further appear, that a large quantity of false money was found in his house, in the state of New-Jersey, and that he was largely concerned in the business of counterfeiting, it was held that the *scienter* was not sufficiently established to convict him.

That a large sum in counterfeit money was found in the trunk of a prisoner, not within the jurisdiction of the court, will be admitted in evidence as a circumstance to show the *scienter*.

Where two persons are equally concerned in the business of passing counterfeit money, or having it in possession, with an intention of passing it, though it should appear that one of the persons only had the actual possession of the

money at the time of the arrest: still, on the traverse of an indictment against both, for having such money in possession, with an intention of passing it, he, who had not the actual possession, was held equally guilty with the other.

An acquittal by a jury on a charge of having a single bank bill in possession, with an intention of passing the same, is no bar to a prosecution against the prisoner so acquitted: and another for having a large quantity of other counterfeit money in possession, though on the first trial, for the purpose of establishing the *scienter*, proof of the same kind is produced as on the second, and both the prisoners with the money described in both indictments, were arrested about the same time.

A certificate of several jurors who pronounced a prisoner guilty, on a charge of forgery, with an affidavit of the prisoner, stating, that since the trial, he had discovered testimony by which he could impeach the testimony of a witness, on the trial, the introduction of whom, as a witness, he, the prisoner, did not previously know, will not be sufficient to induce the court to grant a new trial.

Simeon Van Houton was indicted separately, for having a \$5 counterfeit bill of the Farmers' and Mechanics' Bank of Albany in his possession, with an intention of passing it; and the two prisoners were also indicted for having in possession, with an intention of passing, four \$2 bills on the Merchants' Bank of New-York, one \$100 bill on the Philadelphia Bank, two \$10 and two \$5 on the City Bank of New-York, and bills of the same denomination on the Paterson Bank.

On the traverse of the first-mentioned indictment, it appeared that both the prisoners were arrested in this city, on the 25th of February last, by Jacob Hays and other police officers; Van Houton at or near the porter-house of Philo de Forest, at Fly-market, and Harvey in William near John-street. In the possession of Van Houton there was found a key, with which Hays afterwards unlocked a trunk in the house of Van Houton, who kept an inn at Hoboken, in New-Jersey, and found in the trunk \$2,304 in counterfeit money, and one bill of the same denomination, and on the same Bank, as that laid in the indictment against Van Houton; which bill so laid in the indictment, was taken from the possession of Van Houton at the time of his arrest.

Before the introduction of any testimony concerning the money found in the trunk, Price objected to the evidence, on the ground that the possession of counterfeit

money, without the jurisdiction of the court, was no offence against the laws of this state.

Maxwell contended that the evidence was admissible, as a circumstance to show the intention of the prisoner.

The court admitted it for this purpose only.

On the first trial, John Harvey was admitted and sworn as a state's evidence. It appeared from his statement, that in December last, he was engaged by Van Houton in New-Jersey, to take care of a race-horse; and started with the horse from Hoboken to Saratoga, to attend a race, by the direction of Van Houton. The witness obtained the bill, laid in the indictment, in change for good money, on his way to Saratoga, of John Odell, near Hackensack.

The third day after Harvey started he was overtaken by Van Houton, near Goshen, and they proceeded together above Albany, when Van Houton disclosed to the witness the nature of the expedition; which was, to go to Canada for a quantity of counterfeit money. They travelled together to St. Albans, where Van Houton procured a large quantity of counterfeit money, and put it in a portmanteau, and gave it to the witness, with directions to proceed home on the east side of the North River, and to send word after he arrived in New-York, and before he came over to Hoboken.

The witness followed the directions of Van Houton, and when he arrived at a tavern in the Bowery, he found one Van Vliet, who had been waiting his arrival. Afterwards, the witness saw Van Houton put on an envelope, containing a quantity of counterfeit money, in figures, the amount of the money contained.

The witness, after his return, gave Van Houton the \$5 bill received of Odell, and Van Houton said it was counterfeit, and that he would return it to Odell the first time he saw him.

From the testimony of three of Van Houton's daughters, it appeared that the trunk found by the officers at the house, was in the room occupied solely by Harvey, and belonged to him: and that their father had often shown this bill openly in the bar-room as a counterfeit bill. This last statement was fully corroborated by Adrian Smith.

It was proved by a brother of Van Hou-

ton, that Harvey had declared that he did not believe in the existence of God, and did not believe it a harm to take a false oath.

Garret W. Hopping proved, that to his knowledge, Harvey had sworn false in a court of justice. This witness was prevented by the court from proceeding to particulars; but, to set the character of Van Houton and Harvey in a proper light, we think proper to insert the substance of an affair which took place at Hoboken, which may be relied on as authentic.

Hopping and Van Houton had each an old carriage, and agreed, when no person was present, to exchange at an even bargain. After the bargain was made, they went into a bar-room where Harvey and others were present, and Van Houton jocularly said, they had exchanged, and that the other was to give \$100 to boot. Considering it a joke, Hopping passed it off as such. Behold! an action was afterwards commenced against Hopping by Van Houton, to recover \$100; and Harvey and another witness for the plaintiff, had the villany to swear, that they heard Hopping agree to give Van Houton \$100 on the exchange! It was proved on the trial, that neither of the carriages was worth that sum, but Van Houton recovered.

After the arguments of the Counsel, on the trial of Van Houton, his honour the Mayor charged the jury, that the testimony against the prisoner, in the opinion of the court, was rather too slight to produce a conviction. The only question in the case was, whether he had the bill in his possession with an intention of passing it. Though, it appeared, that the prisoner was largely concerned in the traffic of false money; yet, that evidence had been admitted for the sole purpose of showing the intent. The bill laid in the indictment was not found with the other counterfeit money, and appeared to be a separate concern.

The jury acquitted the prisoner on this charge.

On the traverse of the other indictment, it further appeared, that when Harvey was arrested as before mentioned, there was found in his possession \$2,800, in counterfeit money of the several banks, and of the denomination stated in the indictment. The false money taken from the trunk of Van Houton, in New-Jersey, was also of the same

description; and Philip Earl, one of the constables in that state, proved the handwriting of Van Houton to the figures, on one of the envelopes containing the money taken from Harvey as aforesaid.

Philo De Forest, a witness on behalf of the prosecution, proved that during the month of December last, Harvey, whom he had then known for six weeks, had several conversations with him, wherein Harvey attempted, by setting before the witness the advantages to be derived therefrom, to induce him to become engaged in the business of passing counterfeit money. Harvey stated that he had, and could procure, thousands of such money, and that he had then already passed upwards of \$2,000. The witness, soon after the matter was imparted to him, went to Oliver Hick and disclosed the affair, and asked his advice. The witness also informed a Mr. Bradish, an agent for the Banks, and Lynde Catlin, the cashier of the Merchants' Bank; and was advised to pretend a desire of being concerned, and thereby induce Harvey to make him a confidant and advance some of the money. He did so; and was shown a large quantity of the counterfeit money, and received a small sum from Harvey, in payment for a watch.

The day before the arrest, Harvey and Van Houton came together, and were at Morrison's porter-house, according to a previous appointment made between De Forest and Harvey. The witness having understood that Van Houton was a principal in the concern, waited on him at Morrison's, and the three went together to a public house, at the corner of Burling-slip and Water-street. On the way, Van Houton told the witness, that Harvey and himself, Van Houton, were equally concerned, that he was very happy to find the witness had become engaged; and, that for whatever he did in the business, he should be well paid.

De Forest was corroborated in his testimony by Mr. Catlin, who proved that De Forest gave him the information above stated. Jacob Hays also stated that De Forest gave the Police information, that on the day in which the prisoners were afterwards arrested, he expected they would bring over \$3,000 in counterfeit money.

After the arguments of counsel, his honour the Mayor charged the jury, that if they believed from the testimony, that the

prisoners were equally concerned in the business of passing counterfeit money, they ought to be both found guilty. Though the actual possession was not in Van Houton, at the time of the arrest, yet the possession of Harvey was constructively the possession of the other.

The prisoners were both found guilty.

Before the term was closed, Gardenier and Price moved for a new trial of Van Houton, on his affidavit; stating that previous to the trial, he did not know that De Forest was to be a witness against him, and that since the trial, he had discovered testimony by which he should be able to impeach the testimony of that witness. The counsel also read a certificate from eight or nine of the jurors who had convicted Van Houton, stating, that it was principally on the testimony of De Forest that the verdict was founded; and, that since the trial they had understood much against his character, and they recommended a new trial.

The counsel, after reading these documents, contended that there ought to be a new trial on two grounds, not contained in the papers:

1. No man ought to be put in jeopardy twice for the same offence. Van Houton was first tried on a charge for having a counterfeit \$5 bill in his possession, with an intention of passing it, and was acquitted. This bill was found in his possession at the same time he was taken with Harvey, and the affair in which he was concerned, was an entire transaction. The offence consists, not in passing counterfeit money, but in the intention of passing; and shall the district attorney be tolerated, said the counsel, in dividing the offence into as many parts as there are bills found on a prisoner? They, therefore, contended that the acquittal on the first, was a bar to the second indictment.

2. From the testimony against Van Houton, it appeared that no counterfeit money, contained in the indictment, was found in his possession; and the counsel, therefore, contended that he was improperly convicted on the ground of constructive possession.

Maxwell, contra.

The court delayed giving their opinion until the last day of the term, when Van Houton and Harvey were both put to the bar to receive sentence.

Price again applied to the court on the ground of favour, to suspend Van Houton's sentence.

His honour the Mayor, proceeded to some length in stating the reasons on which a motion for a new trial, and for a suspension of Van Houton's sentence was denied.

On the point concerning the constructive possession, he observed, that should the construction contended for by the counsel for the prisoners prevail, it would be, virtually, a repeal of the statute; which might in various instances be evaded with impunity.

With regard to the acquittal on the first trial, forming a bar to the second, this the court considered not tenable. The possession of the first bill, was entirely distinct and separate from the other transaction, which formed the ground of the second prosecution.

His honour had conversed with the Chief Justice of the supreme court, as a friend, on both these points, who fully concurred in the opinion expressed on the trial.

On the ground of favour, the court had made inquiry concerning Van Houton and his character, and regretted to say, the account was very unfavourable. He had been sentenced to the State-Prison in New-Jersey for the same offence, and the court saw no reason for delaying his sentence.

Each of the prisoners were sentenced to the State-Prison seven years.

(CONSPIRACY.)

WILLIAM W. MCLELLAN'S CASE, Indicted with JOHN B. E. CHAUX.

A merchant who makes a contract with a stranger, to sell him a quantity of goods, for cash, on delivery, ought not to suffer him to take away the goods before paying the money.

The defendant, one of the attorneys in this city, was indicted for conspiring with Chaux, to defraud Freeman Allen of a quantity of tortoise shell, amounting to \$3,336.

The facts in the case appeared to be, that on the 17th day of March last, Chaux, a stranger to Allen, agreed to purchase the shell of him, and pay him cash on the de-

livery. The shell was delivered next morning; and Chaux agreed to get the money at the Bank, at one o'clock the same day. Chaux having carried away the shell to his own store, a grocery, Allen sent his young man at the appointed time, who returned without the money. Allen went himself to Chaux's store, and insisted on having the money or the property before leaving the store. The money not being paid, Allen was proceeding to put the property on a cart, to carry it away, when two executions against J. B. E. Chaux, the one in favour of McClellan for \$318 56, and the other of John B. Chaux, the father of the other defendant, for \$9,072, both issuing from the supreme court, and which had been put into the hands of the officers on the same day, at twenty minutes after two o'clock P. M., were levied on the shell.

The judgment on which the first-mentioned execution was founded, appeared to have been confessed by Chaux, for a bona fide debt; and the other was entered up by McClellan, at the express request of the plaintiff's wife, who exhibited the vouchers on which the judgment appeared to have been confessed; and, at the same time, executed to McClellan a power of attorney, authorizing him to do the business for the plaintiff, who was proved to be an infirm man.

Maxwell abandoned the indictment, and the defendant was acquitted.

SUMMARY.

(GRAND LARCENY.)

Jacob Boose was convicted of this offence, and sentenced to the State-Prison three years and a day.

(PETIT LARCENY.)

Samuel Picket, John Goss, Robert Johnson, al. Robert Evans, Paschal Robinson, John Blakely, Barney McKenzie, Thomas Smith, and Robert Tillman, were each convicted of this offence, and sentenced to the Penitentiary; the first for three years, the two following for two years each, the three following for six months each, and the remainder for shorter periods of time.